

**MINUTES OF HISTORICAL ADVISORY BOARD
REGULAR MEETING OF THURSDAY, SEPTEMBER 7, 2006
COUNCIL CHAMBERS, CITY HALL
2263 SANTA CLARA AVENUE – 7:00 PM**

Chair Anderson called the meeting to order at 7:06 pm. Recording Secretary Gremminger called the roll.

MEMBERS PRESENT: Chair Anderson, Vice-Chair Miller, Board Member Irons.

MEMBERS ABSENT: Board Member Iverson, Board Member Lynch absent for Roll Call. She arrived to the meeting at 7:58 p.m.

STAFF PRESENT: Cathy Woodbury, Planning & Building Director, Terri Highsmith, City Attorney, Andrew Thomas, Planning Services Manager, Vincent Marsh, Planner, Simone Wolter, Planner I, Debbie Gremminger, Recording Secretary.

MINUTES:

M/S to approve the minutes of the Regular Meeting of August 3, 2006 as corrected. 3-0-2.

Ayes: 3; Noes: 0; Absent: 2. Motion carries.

AGENDA CHANGES AND DISCUSSIONS:

None.

ACTION ITEMS:

None.

REPORTS:

1. Review and Comment on Proposed Revisions to the Historical Preservation Ordinance. Staff is requesting this item be continued.
2. Overview of the Ralph M. Brown Act, presented by City Attorneys office.

Terri Highsmith, City Attorney, gave a presentation on compliance with Brown Act, or Open Meeting Act. She began with a brief history of the concept behind the Brown act which is meetings should be held in public. The people have a right to speak at every meeting and to know what is on the agenda. There are four different kinds of meetings. Regular meetings, set by Resolution, with a specific starting time and ending time. Regular meeting agendas must be posted 72 hours prior to the meeting. Special meetings are any meeting that is not a regular meeting and require 24 hour posting prior

to the meeting. An Emergency meeting, a situation of dire emergency in which the City Council can call as early as one hour notice. And finally a Dire Emergency meeting (terrorist attack) which does not need any notice.

In response to Chair Anderson's inquiry regarding where closed sessions fall, Ms. Highsmith responded, that important exceptions to the open meeting act are done in closed session such as, real property negotiations. Another example of a closed session is a discussion with the City Attorney's office for matters which are already in litigation or threats of lawsuit or threats that have come to us. Labor negotiations are another exception. However closed sessions must be identified on the agenda with the topic and the government code that applies. Once the closed session meeting is adjourned, the Mayor must report action taken, if any. Once an item is completed, everything that was discussed in closed session, except attorney-client privileged information, must be disclosed to the public.

In response to Vice-Chair Miller's inquiry regarding examples of Emergency meetings, Ms. Highsmith responded, earthquake, fire, city-wide emergency.

The three basic principles (or purpose) of the agenda are getting the public to the meeting, (i.e., date, time, place), know what items will be discussed or required action, and encourage participation. For the Historical Advisory Board (HAB) Regular meetings must be posted 72 hours in advance. The agenda language should be stated such that anyone reading it will know what is being discussed. Anything that is not in their purview should not be on the agenda. For example, if a speaker comes before the Board and begins to speak to something that the local body can't do anything about such as a matter in a different city, the Chair should advise the speaker that they can't do anything but take the issue to the appropriate venue.

Chair Anderson stated that the HAB is frequently told that they are discussing things that are not in their purview.

Ms. Highsmith stated that the Board should not spend time discussing things that are not in their purview, or worse take action on things that another Board might have already acted upon. It is o.k. to refer them to another body. Rather than relay it to the other venue for them. Ms. Highsmith noted that the Board should never take an action on something that wasn't on the agenda. That will be a void action. Ms. Woodbury added that the Board may ask staff to place an item on a future agenda.

The public may speak on any item on the agenda. Before the Board begins deliberation the public has the right to speak so that it can be included in the Boards deliberation.

The public may speak on any item that is within the Board's jurisdiction that is not on the agenda, during Oral Communications. You can not require the speaker to give their name. The public has the right to have a copy of the meeting packets. In addition if someone wants to submit documents to the Board they must make a copy for the public as well.

Chair Anderson inquired whether they, as a Board, have the right to refuse lengthy documents which are distributed at the hearing. She does not think it is fair to comment or use this in their deliberation if they don't have time to read it. Ms. Highsmith stated that yes, you do have to let it come into the record, what you can say is "Is there something you would like to say for the record, or you may state for the record that this was passed out at the meeting and are unable to take this in account when making my deliberations." What some jurisdictions do, is have rules as to at what point someone can walk a document in before it will not be taken into the record. This must be a policy change.

Chair Anderson asked if that can be established in our Historical Ordinance. Ms. Highsmith stated she will look into that.

Ms. Highsmith stated that a Legislative Body has to comply with the Brown Act. In Alameda, there are various citizens groups that work for the City Manager. A legislative body is created and appointed by the City Council. Any Legislative Body can form a Sub Committee of the Legislative Body, which must be less than a quorum, such as two members. A portion of the Legislative Body can create a sub-committee to do the research outside of the Legislative Body and not violate the Brown Act. The reason why this is o.k., is because they are going to report back to the Board. If they are not a decision making body, they usually meet prior to the decision making group. You may only create a sub-committee in a public hearing so the public will know that it has been created. They must have specific duties or be assigned to gather their data. The sub-committee cannot make any decisions. They must report back to the Board at a time that is noticed, and is on the agenda.

A meeting is anytime a quorum gets together and talks about matters within their jurisdiction. All meetings have to be done in public with an agenda that has been posted 72 hours in advance. To take action on any item, there must be at least 3 members (or a quorum). Three or more members may not get together for breakfast and talk about matters that are within your jurisdiction. This includes e-mails. It is ok for one member to send another member an e-mail, but then if the e-mail is forwarded to another member then that is a violation of the Brown Act. Or if you are knowingly sending separate e-mails to more than two Board Members, then that is a violation. The public can always contact you to talk about anything that is coming up in the future and try to persuade you to lend your support. Then they may go to another Board member and so on and do the same thing. As long as they don't tell anyone that they are making the rounds, it is not a Brown Act violation because you didn't know there was a consensus building. In these situations, it might be a good idea to ask who else they have talked to.

In response to Vice-Chair Miller's inquiry whether any discussion with the applicants, or site visits should be disclosed at the hearing, the answer is yes.

The applicant is entitled to understand, and have it put into record how and why the Board made their decision, or what the findings were. If appealed then everything gets put into the record, for the City Council and if the City gets sued, then all discussions must be disclosed.

There are statutory exemptions, such as social occasions that more than three board members may attend, as long as you don't talk about any items which fall under your jurisdiction. You may also attend conferences together and meetings held in other jurisdictions.

Board Member Lynch arrived at 7:58 p.m.

Chair Anderson stated that when a project is appealed to the City Council, are they (the HAB) allowed to become part of the public in making comments if all of them got up at individual times to reiterate what happens at their meeting? Ms. Highsmith stated that you should get up and identify yourself as a board member but are speaking as a citizen. You don't give up your right as a citizen by serving on a Board.

Board Member Irons stated that he was asked by the City Council, when he went to a meeting and identified himself as an HAB member, but speaking as a citizen, what was said at the HAB meeting. Ms. Highsmith stated that it is perfectly ok to refer them to the minutes for a more accurate account. If you do go to another meeting and represent yourself as an HAB member, be careful that you are properly saying what actually occurred, because you are then speaking for the whole body. It is important to be really true to your board.

When you violate the Brown Act, any action that was taken on that evening becomes void. Such as, if an item wasn't properly described on the agenda you must re-notice the public hearing. Another example is if the meeting was not properly advertised. If you refuse to re-do the meeting, then the person who is challenging may go to court for a civil injunction stating the Brown Act was violated and you will have to pay Court costs. It is better to just re-do the meeting within 30 days to be on the safe side.

The Board thanked Ms. Highsmith for her informative presentation.

3. Overview of the Historical Advisory Board's roles and responsibilities, as specified in the Alameda Municipal Code.

Ms. Woodbury, Planning & Building Director, gave the presentation. She began by emphasizing that the HAB's purpose is to investigate and make recommendations to the City Council on the use of grants from Federal and State agencies, private foundations, or individuals; identify and protect historical resources in the city; review the building study list, which includes updating, expanding or removing any buildings. Another element is participating and developing a public outreach program for historical preservation so they may get a better understanding of preserving a historic building.

When an application for a Certificate of Approval is before this Board, this board should be looking at is whether or not this application is consistent with the Secretary of Interior Standards and Adopted Design Guidelines. You must state the findings very clearly when approving or denying a Certificate of Approval.

Board Member Lynch stated the HAB is also charged with the responsibility to encourage new buildings and developments that will be harmonious with the existing buildings and neighborhoods.

Ms. Woodbury stated that it is the purpose of Chapter 13-21 of the Municipal Code to ensure that new buildings are harmonious with the existing buildings and neighborhoods. Approving the design details is not under the purview of the Historical Advisory Board. That is the jurisdiction of the Planning Board.

Chair Anderson stated that if the purpose of this HAB is to maintain the historical character of the building, and there is no way of reviewing a design to see if those issues have been incorporated, then it becomes useless.

Board Member Irons stated that for a Certificate of Approval for structures built prior to 1942 how can they determine if they are altering a historic structure if they don't know what is proposed.

Ms. Woodbury stated that there is some guidance in the code as to what they may consider when making the decision. If the building is already designated a historic structure such as a monument, or listed on the Historical Building Study List, then the Board may review what is proposed, to determine that it meets the adopted criteria. For buildings (not designated as an Historical Monument) that were constructed prior to 1942, the Board is only looking at the building that is there to determine the value of that structure, for the purposes of demolition. The Board may not get into the detail of the proposed site plan or details.

Ms. Woodbury informed the Board that it is very important to state the findings which support the Board's decision clearly for the record so it is clear how the Board came to this decision in case of an appeal.

Chair Anderson stated she would like the process of applying for a Certificate of Approval to be stated in the Historical Preservation Ordinance.

The Board thanked Ms. Woodbury for her informative presentation.

4. AB 1234 Mandatory Ethics Training Requirements.

Ms. Woodbury informed the Board of the new law, AB 1234 Mandatory Ethics Training, which requires elected and appointed officials to receive a minimum of two hours of ethics training every two years. The deadline for this training is January 1, 2007

5. Overview of the City of Alameda's responsibility as a Certified Local Government (CLG) and the specific responsibilities of the Historical Advisory Board under the CLG program.

Ms. Woodbury introduced Vincent Marsh, who is a contract planner. He gave a brief history of his background in which he has extensive training in Historical Preservation.

Mr. Marsh gave a presentation on the requirements for the CLG program. CLG's must comply with the five basic requirements as follows:

- Enforce appropriate state and local laws and regulation for the designation and protection of historic properties.
- Establish an historic preservation review commission by local ordinance.
- Maintain a system for the survey and inventory of historic properties.
- Provide for public participation in the local preservation program.
- Satisfactorily perform responsibilities delegated to it by the state.

Ms. Woodbury would like the Board to develop a work program for the rest of the year. Staff will agendize a workshop for a future meeting to discuss ideas.

WRITTEN COMMUNICATIONS: (Discussion only)

None.

ORAL COMMUNICATIONS:

Board Member Lynch informed the Board of the upcoming Hometown Tour this month. She would also like to begin to collect data on each of our Historical Monuments, for posting on our City website. She will bring more information to the October meeting.

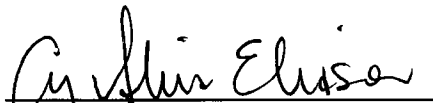
Board Member Irons would like information and background on the Golden Mean.

STAFF COMMUNICATION:

Ms. Woodbury introduced Simone Wolter, Planner I.

ADJOURNMENT: 9:17 p.m.

Respectfully Submitted by:



Cynthia Eliason
Secretary Historical Advisory Board

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